



**US Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to:

Public Notice No. 200301005

Issuance Date:

October 5, 2004

Stream:

Watson Branch

Expiration Date:

November 5, 2004

Address comments to:

US Army Corps of Engineers, Huntington District
602 Eighth Street
ATTN: CELRHF
Huntington, West Virginia 25701-2070

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

SECTION 10: The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act. This notice serves as the Corps of Engineers' request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Upper Kanawha Valley Development Corp.
200 Association Drive
Charleston, West Virginia 25311

LOCATION: The proposed project is located in two unnamed tributaries of Laurel Fork of Witcher Creek and Watsons Branch near Quincy in Cabin Creek District of Kanawha County of West Virginia, approximately 2.5 miles northeast of the Cabin Creek, West Virginia Post Office as depicted on the attached **Figure 1** entitled "General Location Map." Witcher Creek and Watson Branch flow into the Kanawha River, a navigable water of the United States. The attached **Figure 2** entitled "Permit Area" depicts the proposed limits or boundaries of the project area.

DESCRIPTION OF THE PROPOSED WORK: The applicant proposes to remove bituminous coal reserves underlying jurisdictional waters of the United States (U.S.) in conjunction with its proposed mining project known as the “Upland Park.” No valley fills or in-stream sediment control structures are proposed. During the valley fill minimization and optimization phases of the planning, the applicant identified methods of backfilling and final reclamation that eliminated the need for the construction of valley fills and in-stream sediment control structures. Since no valley fills are required for final disposal of fill material, the applicant proposes to store all generated spoil material above the elevation of the lowest coal seam proposed for extraction with this project. This would result in a net change in the elevation of the profiles of the jurisdictional waters of the U.S. on-site.

The proposed project would involve temporary impacts to approximately 4,032 linear feet of intermittent streams and approximately 338 linear feet of ephemeral streams. **Table A** attached to this public notice details the lengths and locations of proposed stream impacts. All jurisdictional waters of the U.S. proposed to be impacted would be replaced in approximately the same locations as depicted on the attached **Figure 3** entitled “Spatial Relation of Jurisdictional Waters to be Impacted to Restored Stream Channels.” The proposed project would involve the reconstruction or restoration of the affected 4,840 linear feet of intermittent stream channel and 430 linear feet of ephemeral stream channel.

All of the sub-watersheds proposed to be impacted with this project would drain sub-watersheds less than 250 acres in size and range from 29.83 acres to 127.08 acres as detailed on **Table B** attached to this public notice. The drainage area divisions proposed in the final configuration of the reclaimed project are positioned in such a manner as to approximate the configuration of drainage area division existing before mining commences to protect the overall hydrologic balance of net flow in each sub-watershed.

The West Virginia Department of Environmental Protection (WVDEP) is reviewing the applicant’s Surface Mining Permit Application (S-3017-03) pursuant to the Surface Mining Control and Reclamation Act (SMCRA) of 1977.

The proposed project would affect 230.70 acres of surface area, including 157.30 acres of mineral removal to facilitate the recovery of approximately 1,767,360 million tons of bituminous coal available in two splits of the Five Block and one split of the Six Block coal seams. Mineral extraction would be accomplished using contour and area mining techniques. The proposed project would generate approximately 21,184,561 million cubic yards of overburden after bulking (20% swell factor), of which the entire volume is proposed to be placed upon the mined area as backfill.

The proposed project is classified as a “Remining” project. A Remining project is a project that seeks to mine again an area that was first mined before the implementation of the SMCRA of 1977. Typically, remining projects have no entity that is responsible for the reclamation of site. In the case of this proposed project, remining of the project area would eliminate approximately 9,500 lf (1.8 linear miles) of orphaned highwall on the Five Block coal seam. The Five Block and Six Block coal seams are recognized as seams that have the potential to produce acid mine drainage. The mining activities conducted before the implementation of the SMCRA of 1977 have contributed to the causation of the degraded water qualities prevalent through the Laurel Fork and Watson Branch sub-watersheds. This Remining project has the potential to improve water qualities in Laurel Fork and Watson Branch by the implementation of one or more Best Management Practices (BMPs) as established and recognized by the Environmental Protection Agency (EPA). These BMPs include segregation/isolation of toxic producing material, special materials handling plans, elimination of

portions of old workings and controlled surface water drainage practices. The applicant has received approval from the West Virginia Environmental Quality Board (WVEQB) for a variance from applicable water quality standards due to the fact the degraded water prevalent in the jurisdictional streams was caused by mining that occurred prior to the implementation of the SMCRA of 1977. The WVEQB can only grant a variance from applicable water quality standards under the Remining program for operations that exhibit the potential for water quality improvements due to the mining again of areas that were previously mined before the implementation of SMCRA of 1977.

This proposed project would be accomplished in five general phases over approximately 4.5 years as depicted upon **Figures 4 through 8** attached to this public notice. The mining phases, as presented in the approved WVDEP SMCRA permit, discuss only the mineral removal and reclamation components of the proposed project and do not address the timing of the jurisdictional waters impact or the reconstruction/restoration measures. Because of this, the mining phase maps contained herewith address all the above relevant components. Each phase presented below, if applicable, is referenced to the corresponding mining phase presented in the approved WVDEP SMCRA permit. A discussion of each phase is below.

Phase I (Figure 4) – Phase I would involve the restoration of a total of approximately 935 linear feet of intermittent stream channel at two separate locations in Kathy Branch. Kathy Branch has been impacted in the past by mining activities. These restoration activities are expected to enhance the structure of the stream, provide erosion minimization, and enhance the riparian zone vegetation. These mitigation efforts are to be undertaken in advance of the mining activities. No mining phase presented in the WVDEP SMCRA permit corresponds to this phase.

Phase II (Figure 5) – Phase II would involve the commencement of mining activities in areas of both the Laurel Fork and Watson Branch watersheds. The mining activities would impact approximately 1,529 linear feet of intermittent streams in the Laurel Fork watershed. Stream enhancement activities would take place in the Laurel Fork and Watson Branch watersheds below the outcrop of the lowest coal seam to be mined. These reaches of streams flow through areas of spoil that was deposited over the outcrops of the hillside resultant of past mining practices. Stream restoration would be accomplished in 500 linear feet of intermittent stream in the Watson Branch watershed and 240 linear feet of intermittent stream in the Laurel Fork watershed. Phase II corresponds to Phase I of the approved WVDEP SMCRA permit. Phase I of the approved WVDEP SMCRA permit states mining disturbance would occur on 73.20 acres, reclamation would occur on 22.50 acre and 50.70 acre would remain unreclaimed at the end of the phase. Sediment control during this phase would be provided by on-bench sediment ditches and ponds.

Phase III (Figure 6) – Phase III would involve the continuation of mining activities in areas of both the Laurel Fork and Watson Branch watersheds. The mining activities would impact approximately 2,503 linear feet of intermittent streams and 338 linear feet of ephemeral streams in the Watson Branch watershed. Phase III would involve the completion of the mineral extraction associated with this project. Stream reconstruction and restoration activities would take place in the Laurel Fork watershed in areas where mining occurred and final reclamation has been accomplished. These reaches of reconstructed or restored streams would be constructed in such a manner as to mimic the plan, dimension and profile of the existing streams, to the extent possible, with allowances for the regrading and reclamation of the mine site. Stream reconstruction/restoration would be accomplished in 1,430 linear feet of intermittent stream in the Laurel Fork watershed. Phase III corresponds to Phase II, III and IV of the approved WVDEP SMCRA permit. Phases II, III and IV of the approved WVDEP SMCRA permit state mining disturbance would occur on 157.50 additional acres,

reclamation would occur on 150.93 additional acres and 57.27 acres would remain unreclaimed at the end of Phase IV. Sediment control during this phase would be provided by on-bench sediment ditches and ponds.

Phase IV (Figure 7) – Phase IV would involve the continuation of reclamation activities until the final regrading and reclamation of the project has been accomplished. No additional jurisdictional water impacts are proposed with this or future phases. Stream reconstruction and restoration activities would take place in the Watson Branch watershed in areas where mining occurred and final reclamation has been accomplished. These reaches of reconstructed or restored streams would be constructed in such a manner as to mimic the plan, dimension and profile of the existing streams to the extent possible with allowances for the regrading and reclamation of the mine site. Stream reconstruction/restoration would be accomplished in 747 linear feet of intermittent stream at two separate locations and 430 linear feet of ephemeral stream in two separate locations in the Watson Branch watershed. Phase IV corresponds to Phase V of the approved WVDEP SMCRA permit. Phase V of the approved WVDEP SMCRA permit states no additional mining disturbance would occur, reclamation would occur on 34.00 additional acres and 23.27 acres would remain unreclaimed at the end of the phase. Sediment control during this phase would be provided by on-bench sediment ditches and ponds.

Phase V (Figure 8) – Since all final regrading and reclamation activities would have been accomplished in previous phases discussed above, Phase V would involve only the elimination of the sediment control ponds and the reconstruction/restoration of the stream channels through these reaches. No additional jurisdictional water impacts are proposed with this phase. Stream reconstruction and restoration activities would take place in the Laurel Fork and Watson Branch watersheds in areas where final elimination of the ponds would occur. These reaches of reconstructed or restored streams would be constructed in such a manner as to mimic the plan, dimension and profile of the existing streams to the extent possible with allowances for the regrading and reclamation of the mine site. Stream reconstruction/restoration would be accomplished in 385 linear feet of intermittent stream in the Laurel Fork watershed and 603 linear feet of intermittent stream in the Watson Branch watershed in three separate locations. Phase V corresponds to Phase VI of the approved WVDEP SMCRA permit. Phase VI of the approved WVDEP SMCRA permit states no additional mining disturbance would occur, reclamation would occur on 23.27 additional acres and 0.00 acres would remain unreclaimed at the end of the phase. Sediment control during this phase would be provided by on-bench sediment ditches and ponds until such time the ponds are eliminated.

A description of the mining and reclamation acreage, by phase, is provided on **Table C** attached to this public notice.

The purpose of this proposed project is to recover bituminous coal reserves by the surface mining method.

MITIGATION PLAN: The applicant has submitted a conceptual compensatory mitigation plan (CMP) to compensate for temporary impacts to waters of the U.S. regulated by the Department of the Army, Corps of Engineers. The applicant proposes reconstruction and restoration of the affected stream channels within the confines of the backfill and reclamation areas and by the improvement of water quality within the confines of the backfill and reclamation areas. No permanent impact, or permanent loss of jurisdictional water lengths, is proposed with this project. It can be further expected the anticipated water quality improvements have the potential to improve water qualities

outside the confines of the backfill and reclamation areas as this water leaves the project area. The stream reconstruction and restoration measures proposed provide in-kind, on-site restoration and enhancement of the aquatic resources. A riparian zone is proposed to be established along the lengths of streams to be reconstructed or restored. Dimensions of the reconstructed or restored stream channels are determined based upon empirical data from existing jurisdictional channels that would be impacted with the project. The channels to be reconstructed or restored would incorporate bankfull and flood prone areas.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the West Virginia Department of Environmental Protection.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. A copy of this public notice will be sent to the State Historic Preservation Office for their review. Comments concerning archeological sensitivity of a project area should be based upon collected data.

ENDANGERED/THREATENED SPECIES REVIEW: Two federally listed endangered species, the Indiana bat (*Myotis sodalis*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) may occur within the project area. The applicant retained the services of Environmental Solutions and Innovations, Inc. to conduct a mist net survey to determine the presence or probable absence of the Indiana bat. Two mist net sites were selected and surveyed between August 8-12, 2003. No Indiana bats were captured during this survey. The applicant will be required to also survey the proposed project site to determine the presence of open, abandoned mine portals that could support summer or winter colonies of the endangered Virginia big-eared bat or provide hibernaculum for the Indiana bat. At this time, a determination of effect cannot be made until the findings of the portal survey are submitted for review. Upon receipt of the survey, a determination of effect will be made by the Huntington District concerning compliance with Section 7(c) of the Endangered Species Act of 1972 (as amended).

This public notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).


PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity.

This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are

conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

SOLICITATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to Mrs. Teresa Spagna, Project Manager, South Regulatory Section, CELRH-OR-FS, U. S. Army Corps of Engineers Huntington District, 502 Eighth Street, Huntington, West Virginia 25701-2070. Please note names and addresses of those who submit comments in response to this public notice may be made publicly available. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please call Mrs. Teresa Spagna of the South Regulatory Section at 304-399-5710.


Ginger Mullins, Chief
Regulatory Branch

(W)

Table A

Phase	Impacted				Reconstructed/Restored	
	Ephemeral		Intermittent		Ephemeral	Intermittent
	Temporary	Permanent	Temporary	Permanent		
I						935 lf
II			1529 lf			740 lf
III	338 lf		2503 lf			1430 lf
IV					430 lf	747 lf
V						988 lf
Total	338 lf		4032 lf		430 lf	4840 lf

Table B

Sub-watershed	Contributing Outlets	Area
Unnamed of Laurel Fork	Outlets 003 and 004	29.83 Acres
Unnamed of Laurel Fork	Outlets 005 and 006	80.66 Acres
Unnamed of Watson's Branch	Outlet 001	61.70 Acres
Unnamed of Watson's Branch	Outlet 002	127.08 Acres

Table C

Phase	Mining			Reclamation			Unreclaimed Acres
	Start	End	Acres	Start	End	Acres	
I	July, 04	Dec, 04	73.20	Aug, 04	Jan, 05	22.50	50.70
II	Jan, 05	Dec, 05	55.24	Feb, 05	Jan, 06	44.44	61.50
III	Jan, 06	Dec, 06	47.49	Feb, 06	Jan, 07	63.27	45.72
IV	Jan, 07	Dec, 07	54.77	Feb, 07	Jan, 08	43.22	57.27
V				Feb, 08	July, 08	34.00	23.27
VI				Aug, 08	Aug, 10	23.27	0.00

UPPER KANAWHA VALLEY DEVELOPMENT CORP.

200 Association Drive
Charleston, WV 25311

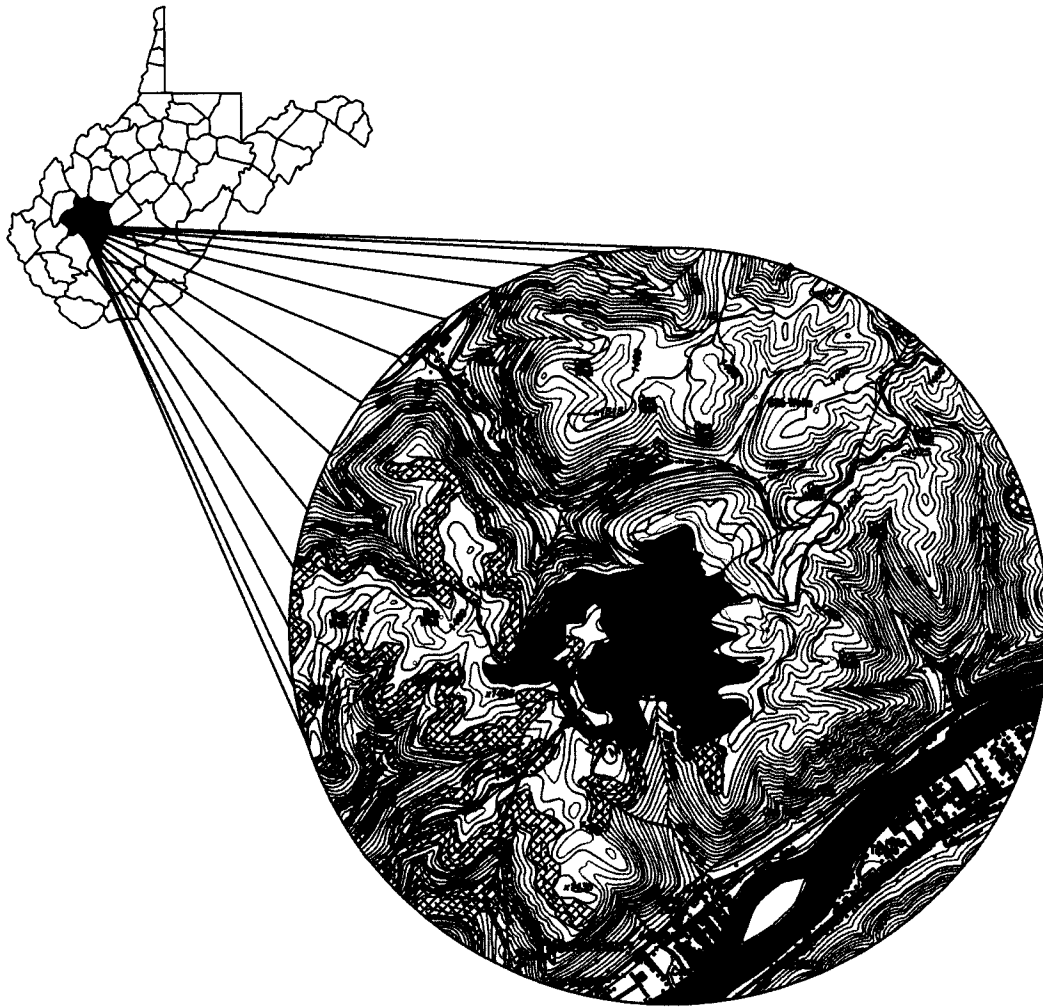


Figure 1 of 9

UPPER KANAWHA VALLEY DEVELOPMENT CORP.
UPLAND AREA

General Location Map

DATE: 08/03/04

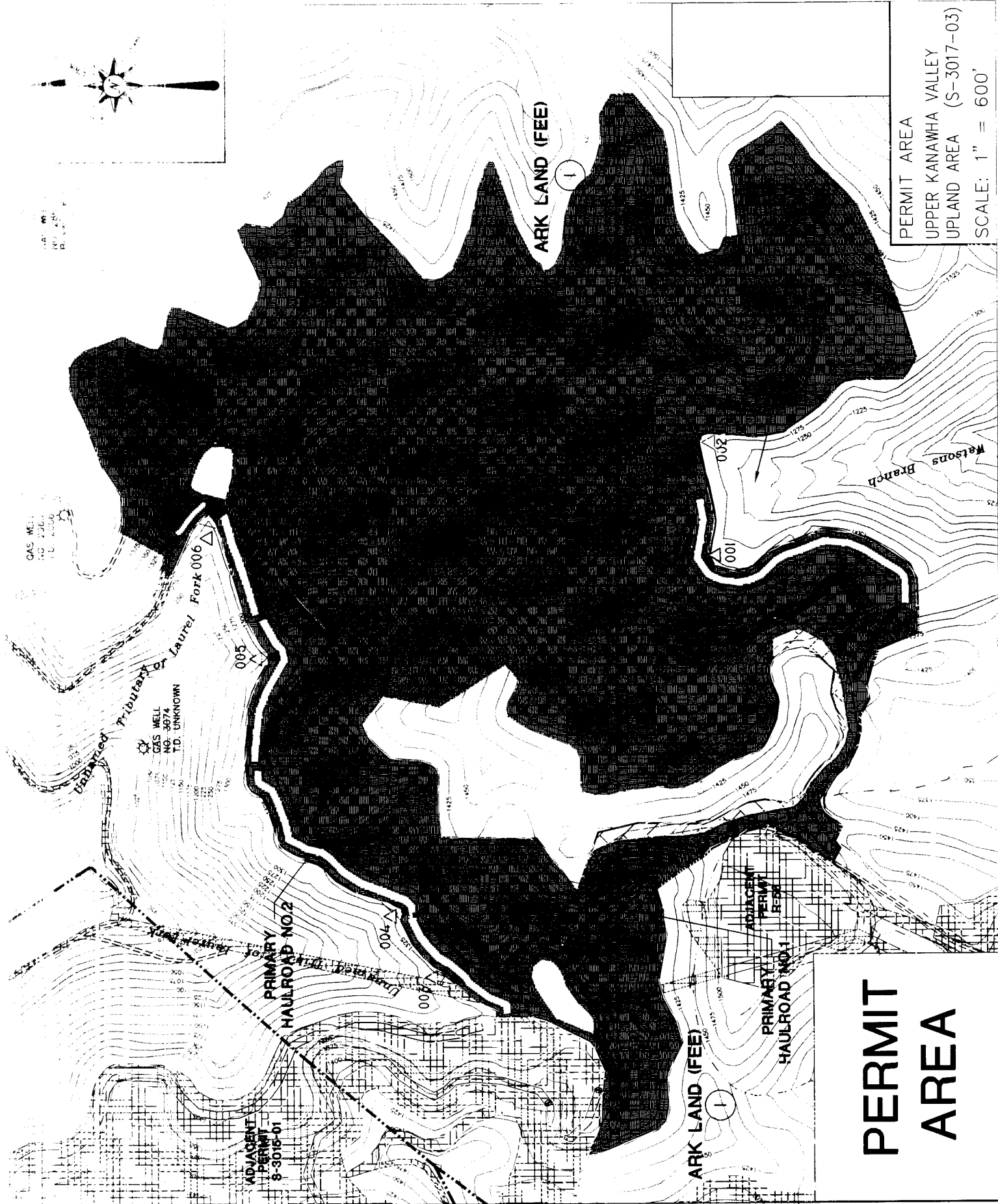
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PROJECT: 04109

HERITAGE

TECHNICAL ASSOCIATES



PERMIT AREA
UPPER KANAWHA VALLEY
UPLAND AREA (S-3017-03)
SCALE: 1" = 600'

**PERMIT
AREA**

Figure 2 of 3

UPPER KANAWHA VALLEY DEVELOPMENT CORP.
UPLAND AREA
PERMIT AREA

3017-03 NPDES No.

HERITAGE

TECHNICAL ASSOCIATES

AD BY

R. Miller

PROJECT

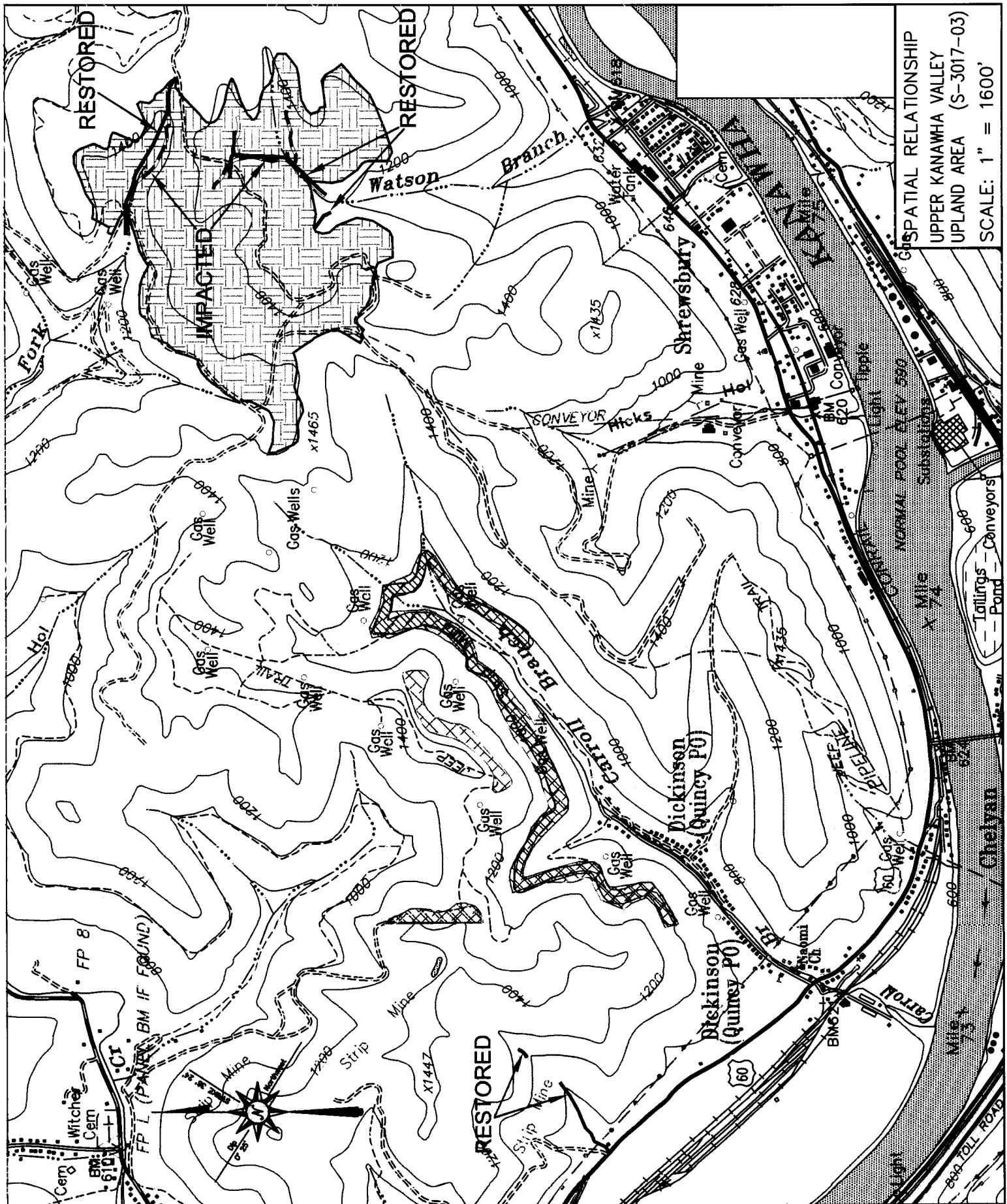


Figure 3 of 9

DATE: July, 2004

CAD BY: B. Miller

FILENAME:

PROJECT:	
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UPPER KANAWHA VALLEY DEVELOPMENT CORP.

UPLAND AREA SPATIAL RELATIONSHIP MAP

3017-03 NPDES No.

HERITAGE

TECHNICAL ASSOCIATES

PHASE	IMPACTED				RESTORED	
	EPHEMERAL		INTERMITTENT		EPHEMERAL	INTERMITTENT
	TEMP.	PERM.	TEMP.	PERM.		
I						935 LF
II			1,529 LF			740 LF
III	338 LF		2,503 LF			1,430 LF
IV					430 LF	747 LF
V						988 LF
TOTAL	338 LF		4,032 LF		430 LF	4,840 LF
RATIO RESTORED STREAM / IMPACTED STREAM EXCESS EPHEMERAL STR. 430 / 338 = 1.27 : 1 EXCESS INTERMITTENT STR. 4,840 / 4,032 = 1.20 : 1 TOTAL EXCESS RESTORED STR. 5,270 / 4,370 = 1.21 : 1						

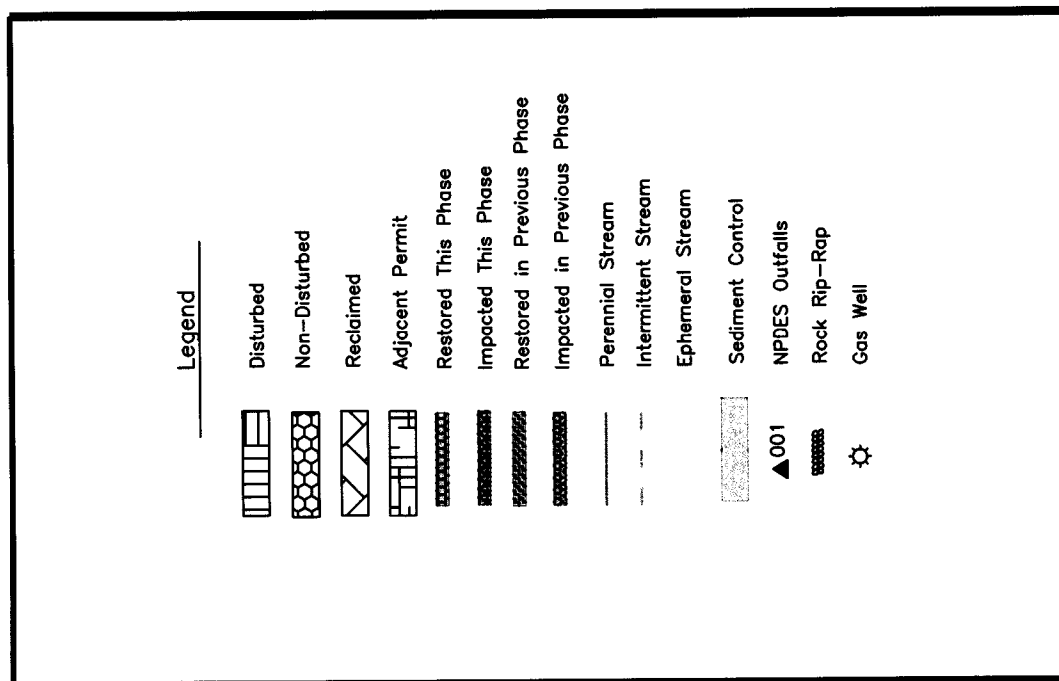



Figure 9 of 9

DATE: July, 2004

CAD BY: 

FILENAME:

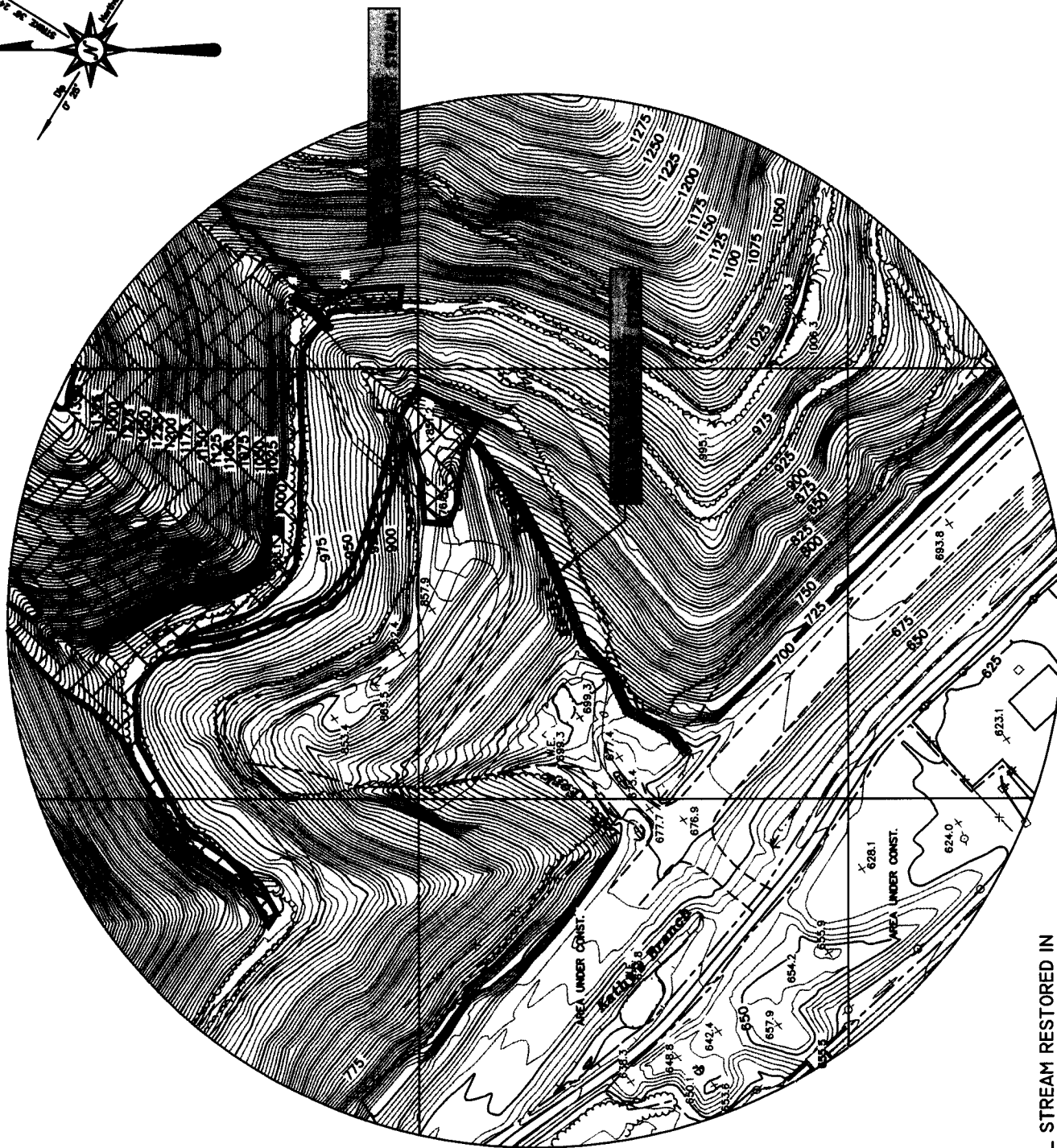
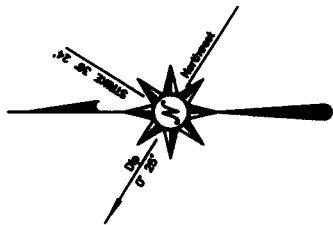
PROJECT:

UPPER KANAWHA VALLEY UPLAND AREA STREAM KEY and LEGEND

3017-03 NPDES No.

HERITAGE

TECHNICAL ASSOCIATES



INSERT NO.1
PHASE I
KATHY'S BRANCH
SCALE: 1" = 600'

• TOTAL STREAM RESTORED IN
KATHY'S BRANCH THIS
PHASE (1,560 LF)

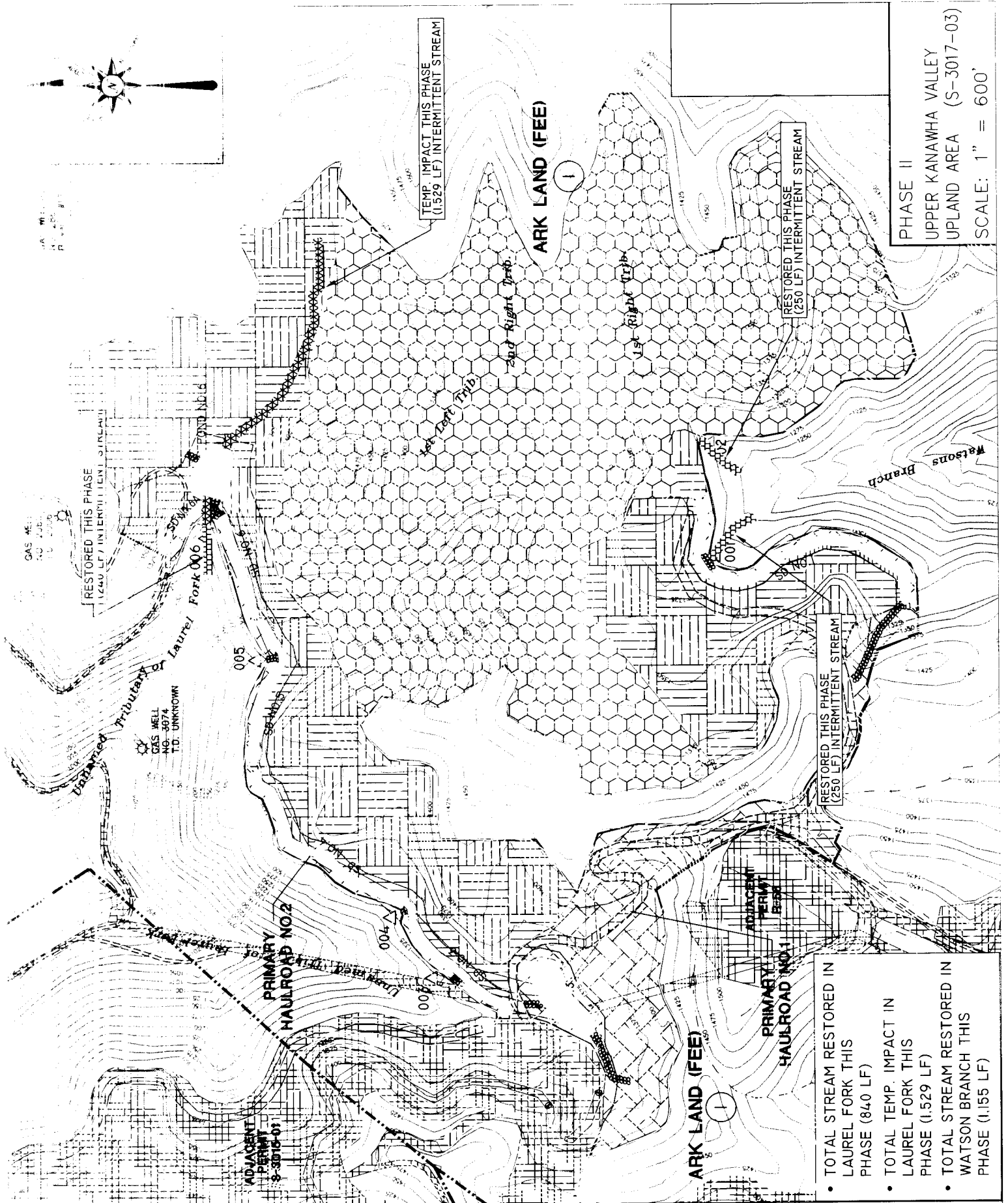
Figure 4 of 9

DATE: July, 2004 CAD BY: *B. Miller*
FILENAME: PROJECT:

UPPER KANAWHA VALLEY UPLAND AREA
PHASE I MAP

3017-03 NPDES No.





PHASE II

UPPER KANAWHA VALLEY
UPLAND AREA (S-3017-03)

SCALE: 1" = 600'

- TOTAL STREAM RESTORED IN LAUREL FORK THIS PHASE (840 LF)
- TOTAL TEMP. IMPACT IN LAUREL FORK THIS PHASE (1,529 LF)
- TOTAL STREAM RESTORED IN WATSON BRANCH THIS PHASE (1,155 LF)

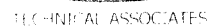
Figure 5 of 5

UPPER KANAWHA VALLEY UPLAND AREA PHASE II MAP

3017-03 NPDES No.

HERITAGE

TECHNICAL ASSOCIATES





ARK LAND (FEE)



RESTORED IN PREVIOUS PHASE
(1,430 LF) INTERMITTENT STREAM

TEMP. IMPACTED IN PREVIOUS PHASE
(1,529 LF) INTERMITTENT STREAM

RESTORED THIS PHASE
(215 LF) EPHEMERAL STREAM

TEMP. IMPACTED IN PREVIOUS PHASE
(541 LF) INTERMITTENT STREAM

RESTORED THIS PHASE
(552 LF) INTERMITTENT STREAM

TEMP. IMPACTED IN PREVIOUS PHASE
(462 LF) INTERMITTENT STREAM

RESTORED THIS PHASE
(238 LF) EPHEMERAL STREAM

RESTORED THIS PHASE
(195 LF) INTERMITTENT STREAM

RESTORED IN PREVIOUS PHASE
(250 LF) INTERMITTENT STREAM

TEMP. IMPACTED IN PREVIOUS PHASE
(400 LF) INTERMITTENT STREAM

RESTORED THIS PHASE
(215 LF) EPHEMERAL STREAM

TEMP. IMPACTED IN PREVIOUS PHASE
(1,100 LF) INTERMITTENT STREAM

RESTORED IN PREVIOUS PHASE
(250 LF) INTERMITTENT STREAM

PRIMARY
HAULROAD NO. 1

HAULROAD NO. 1

PRIMARY
HAULROAD NO. 1

HAULROAD NO. 1

ARK LAND (FEE)

- TOTAL STREAM RESTORED IN
WATSON BRANCH THIS
PHASE (2,332 LF)
- TOTAL TEMP. IMPACT
IN THIS PHASE (0 LF)

PHASE IV

UPPER KANAWHA VALLEY

UPLAND AREA

(S-3017-03)

SCALE: 1" = 600'

UPPER KANAWHA VALLEY UPLAND AREA PHASE IV MAP

3017-03 NPDES No.

HERITAGE

TECHNICAL ASSOCIATES

Page 1 of 9

DATE BY

3/11/11

PROJECT

NAME

